

PATENT  
Attorney Docket No. 05725.0806

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: )  
Carlos O. PINZON et al. ) Group Art Unit: 1711  
Application No.: 09/733,896 ) Examiner: Nathan M. NUTTER  
Filed: December 12, 2000 )  
For: COMPOSITIONS COMPRISING ) Confirmation No.: 5467  
HETEROPOLYMERS AND AT LEAST )  
ONE OIL-SOLUBLE POLYMER CHOSEN )  
FROM ALKYL CELLULOSES AND )  
ALKYLATED GUAR GUMS (AS )  
AMENDED) )

**Attention: Mail Stop Appeal Brief-Patents**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**APPEAL BRIEF UNDER BOARD RULE § 41.37**

In support of the Notice of Appeal filed October 3, 2006, and further to Board Rule 41.37, Appellants present this brief and enclose herewith the fee of \$500.00 required under 37 C.F.R. § 1.17(c). This Appeal Brief is also being filed concurrently with a petition for an Extension of Time for one month and the appropriate fee.

This Appeal responds to the July 17, 2006, final rejection of claims 318-336.

If any additional fees are required or if the enclosed payment is insufficient, Appellants request that the required fees be charged to Deposit Account No. 06-0916.

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**I. Real Party In Interest**

L'Oréal S.A. is the assignee of record, as evidenced by the assignment recorded April 26, 2001, at Reel 011765, Frame 0183, and as such, L'Oréal S.A. is the real party in interest in this appeal.

**II. Related Appeals and Interferences**

Appellants bring to the attention of the Board the existence of a pending litigation. L'Oreal's U.S. Patent Nos. 6,716,420 B2 and 6,869,594, which are commonly assigned to the owner of the present application and claim related subject matter, are the subject of a patent infringement action filed by L'Oreal S.A. and L'Oreal USA, Inc. against Estee Lauder Companies, Inc., Estee Lauder, Inc., and Origins Natural Resources, Inc. in the United States District Court for the District of New Jersey. *L'Oreal S.A., et al. v. Estee Lauder Companies Inc., et al.*, Civil Action No. 04-1660 (HAA) (D.N.J. filed Apr. 7, 2004). This litigation was brought to the attention of the Examiner in the Notification of Pending Litigation filed July 23, 2004.

Additionally, Appellants bring to the attention of the Board the existence of appeals in related copending Application Nos. 09/733,899; 09/733,900; and 10/182,830 (Attorney Docket Nos. 5725.0595-00; 5725.0594-00; and 5725.0795-01, respectively). Application No 09/733,899 is directed towards compositions comprising polymers of formula (I), as in the presently claimed invention, and film-forming silicone resins. Application No. 09/733,900 is directed to compositions comprising polymers of formula (I), as in the presently claimed invention, and at least one oil-soluble cationic surfactant. Application No. 10/182,830 is directed towards compositions comprising polymers of formula (I), as in the presently claimed invention, and at least one organic solid substance having a melting point of about 45°C or greater or at least silica.

Each of those co-pending applications were previously brought to the attention of the Examiner in this application. The Notices of Appeal in Application Nos. 09/733,899 and 09/733,900 were both filed on September 2, 2005, and the Notice of Appeal in

10/182,830 was filed on August 17, 2006. Although Application Nos. 09/733,899; 09/733,900; and 10/182,830 are not directly related to the present application, Appellants bring those Applications and their status to the Board's attention in the interest of full disclosure.

Appellants, Appellants' undersigned legal representative, and the assignee know of no other appeals, interferences, or proceedings that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**III. Status of Claims**

Claims 318-336 are pending.

The Examiner has rejected claims 335 and 336 under 35 U.S.C. § 112, first paragraph.

The Examiner has also provisionally rejected claims 318-336 for obviousness-type double patenting over (1) claims 1-102 of co-pending Application No. 09/733,897; (2) claims 336-367 of co-pending Application No. 09/877,898; (3) claims 1-126 of co-pending Application No. 10/129,377; and (4) claims 1-38 and 41-44 of co-pending Application No. 10/198,931. Claims 318-334 and 336 have been provisionally rejected for obviousness-type double patenting over claims 1-124 of co-pending Application No. 10/203,254, and claims 318-325, 328-332, and 334 have been rejected for obviousness-type double patenting over claims 1-19 of U.S. Patent No. 6,761,881 to Bara.

Claims 318-334 have been rejected under 35 U.S.C. § 103 over U.S. Patent Nos. 6,402,408 to Ferrari; 5,500,209 to Ross et al., or 5,783,657 to Pavlin et al., taken with U.S. Patent Nos. 4,699,779 to Palinczar; 6,180,123 to Mondet; or 5,961,998 to Arnaud et al.

As argued below, Appellants believe that the rejected claims are patentable.

**IV. Status of Amendments**

All amendments have been entered, and no amendments under 37 C.F.R. § 1.116 have been made subsequent to the issuance of the rejection dated July 17, 2006.

**V. Summary of Claimed Subject Matter**

Independent claim 318 is directed towards a cosmetic composition comprising at least one liquid fatty phase which comprises (i) at least one structuring polymer, wherein said at least one structuring polymer is at least one polyamide polymer comprising a polymer skeleton which comprises at least one amide repeating unit; and (ii) at least one oil-soluble polymer chosen from alkyl celluloses and alkylated guar gums. Support for a cosmetic composition comprising at least one liquid fatty phase is found on page 3, II. 1-2 and page 7, II. 27-28 (fourth full paragraph) of the specification. Support for a structuring polymer of at least one polyamide polymer comprising a polymer skeleton which comprises at least one amide repeating unit is found on page 7, II. 27-31 (fourth full paragraph) of the specification. Support for at least one oil-soluble polymer chosen from alkyl celluloses and alkylated guar gums is found on page 1, II. 5-7 (first paragraph) of the specification.

Support for the dependent claims 319-334 can be found in the specification and claims as originally filed and as set forth element by element in Table 1 below.

**Table 1.**

<u>Element</u>	<u>Support in Specification</u>
at least one liquid fatty phase of the composition comprises at least one oil	Page 17, II. 10-11 (second full paragraph)
at least one oil chosen from at least polar oil and at least one apolar oil	Page 17, II. 11-13 (second full paragraph)
at least one polar oil chosen from: - hydrocarbon-based plant oils with a high content of triglycerides comprising fatty acid esters of glycerol in which the fatty acids comprise chains having from 4 to 24 carbon atoms, said chains possibly being chosen from linear and	Page 18, I. 15 to page 19, I. 9.

<p>branched, and saturated and unsaturated chains;</p> <ul style="list-style-type: none"> <li>- synthetic oils or esters of formula <math>R_5COOR_6</math> in which <math>R_5</math> is chosen from linear and branched fatty acid residues comprising from 1 to 40 carbon atoms and <math>R_5 + R_6 \geq 10</math>;</li> <li>- synthetic ethers containing from 10 to 40 carbon atoms;</li> <li>- <math>C_8</math> to <math>C_{26}</math> fatty alcohols; and</li> <li>- <math>C_8</math> to <math>C_{26}</math> fatty acids.</li> </ul>	
<p>at least one apolar oil chosen from:</p> <ul style="list-style-type: none"> <li>- silicone oils chosen from volatile and non-volatile, linear and cyclic polydimethylsiloxanes that are liquid at room temperature;</li> <li>- polydimethylsiloxanes comprising alkyl or alkoxy groups which are pendant and/or at the end of the silicone chain, the groups each containing from 2 to 24 carbon atoms;</li> <li>- phenylsilicones; and</li> <li>- hydrocarbons chosen from linear and branched, volatile and non-volatile hydrocarbons of synthetic and mineral origin.</li> </ul>	Page 19, II. 10-23.
<p>at least one non-volatile oil</p>	Page 20, II. 1-4.
<p>at least one non-volatile oil chosen from hydrocarbon-based oils of mineral, plant and synthetic origin, synthetic esters and ethers, and silicone oils</p>	Page 20, II. 1-4.
<p>at least one volatile solvent chosen from hydrocarbon-based solvents and silicone solvents optionally comprising alkyl or alkoxy groups that are pendant or at the end of a silicone chain</p>	Page 20, II. 9-16 (third paragraph)
<p>alkyl celluloses chosen from ethylcelluloses</p>	Page 21, I. 19 (second paragraph), states, "alkyl cellulose[ ] may be chosen from, for example, ethylcellulose . . . ."
<p>alkylated guar gums chosen from <math>C_1-C_5</math> alkyl galactomannans</p>	Page 21, II. 17-18 (second paragraph), states, "[a]lkylated guar gums include, for example, . . . $C_{1-5}$ alkyl galactomannans . . . ."
<p>alkylated guar gums chosen from ethyl guars</p>	Page 21, II. 17-18 (second paragraph), states, "[a]lkylated guar gums include, for example,

	ethyl guars . . . ”
at least one liquid fatty phase further comprising a silicone oil	Page 20, II. 1-3 (first paragraph), discloses that “[t]he liquid fatty phase, in one embodiment, contains . . . silicone oils . . . ”
composition further comprising at least one fatty alcohol	Page 1, II. 7-8 (first paragraph), stating that “[t]he compositions may further comprise at least one fatty alcohol.”
composition further comprising at least one oil-soluble ester	Page 24, I. 3 to page 25, I. 10, identifying oil-soluble esters.
at least one oil-soluble ester comprising at least one free hydroxy group	Page 24, II. 4-5 (first full paragraph).
at least one oil-soluble ester is not castor oil	Page 24, II. 5-8 (first full paragraph).

Independent claim 335 is directed towards a cosmetic composition comprising at least one liquid fatty phase which comprises (i) at least one structuring polymer chosen from ethylenediamine/stearyl dimer tallate copolymer; and (ii) at least one oil-soluble polymer chosen from alkyl celluloses and alkylated guar gums. Support for at least one structuring polymer chosen from ethylenediamine/stearyl dimer tallate copolymer is found on page 12, II. 25-30 (fourth paragraph) of the specification.

Independent claim 336 is directed towards a cosmetic composition comprising at least one liquid fatty phase which comprises (i) at least one structuring polymer chosen from ethylenediamine/stearyl dimer dilinoleate copolymer; and (ii) at least one oil-soluble polymer chosen from alkyl celluloses and alkylated guar gums. Support for at least one structuring polymer chosen from ethylenediamine/stearyl dimer dilinoleate copolymer is found on page 12, II. 25-30 (fourth paragraph) of the specification.

**VI. Grounds of Rejection**

- A. Claims 335-336 stand rejected under 35 U.S.C. § 112, first paragraph, as allegedly not enabled.
- B. Claims 318-336 stand provisionally rejected for obviousness-type double patenting over claims 1-102 of co-pending Application No. 09/733,897.
- C. Claims 318-336 stand provisionally rejected for obviousness-type double patenting over claims 336-367 of co-pending Application No. 09/877,898.
- D. Claims 318-336 stand provisionally rejected for obviousness-type double patenting over claims 1-126 of co-pending Application No. 10/129,377.
- E. Claims 318-336 stand provisionally rejected for obviousness-type double patenting over claims 1-38 and 41-44 of co-pending Application No. 10/198,931.
- F. Claims 318-334 and 336 stand provisionally rejected for obviousness-type double patenting over claims 1-124 of co-pending Application No. 10/203,254
- G. Claims 318-325, 328-332, and 334 stand rejected for obviousness-type double patenting over claims 1-19 of U.S. Patent No. 6,761,881 to Bara.
- H. Claims 318-334 stand rejected under 35 U.S.C. § 103 over U.S. Patent Nos. 6,402,408 to Ferrari; 5,500,209 to Ross et al., or 5,783,657 to Pavlin et al., taken with U.S. Patent Nos. 4,699,779 to Palinczar; 6,180,123 to Mondet; or 5,961,998 to Arnaud et al.

**VII. Argument**

**A. Claims 335 and 336 Are Enabled Under 35 U.S.C. § 112**

Claims 335 and 336 have been rejected under 35 U.S.C. § 112, as allegedly failing to comply with the enablement requirement. According to the Examiner, “[t]he compositions of ‘ethylenediamine/stearyl dim[ ]er tallate copolymer’ recited in claim 335 and ‘ethylenediamine/stearyl dim[ ]er dilinoleate copolymer’ recited in claim 336 . . . is not enabled by the disclosure.” Final Office Action at 2. The Examiner maintains that the specification’s reference to Uniclear® as mixtures of copolymers derived from monomers of (i) C<sub>36</sub> diacids and (ii) ethylenediamine (specification at page 12, ll. 23-31, fourth paragraph) fails to teach the specific monomers, even though one skilled in the art would recognize that Uniclear® is the tradename for ethylenediamine/stearyl dimer tallate copolymer and ethylenediamine/stearyl dimer dilinoleate copolymer<sup>1</sup>, as claimed herein. In this regard, the Examiner cites M.P.E.P. § 608.01(v) for the proposition that a “a trademark and the product it identifies is sometimes indefinite, uncertain, and arbitrary.” From this, the Examiner concludes that the present claims are not enabled. Appellants respectfully traverse.

The test for whether or not a claim complies with the enablement requirement as set forth in the first paragraph of 35 U.S.C. § 112, is “whether one reasonably skilled in the art could make or use the invention from the disclosure in the patent coupled with information known in the art without undue experimentation.” M.P.E.P. § 2164.01,

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<sup>1</sup> See International Cosmetic Ingredient Dictionary and Handbook (“CTFA”) page 657-58 (attached herewith as Exhibit 1 in Section IX), reciting that ethylenediamine/stearyl dimer tallate copolymer is at least one copolymer of ethylenediamine and tall oil dimer acid monomers, end-blocked with stearyl alcohol and further reciting that a trade name for ethylenediamine/stearyl dimer tallate copolymer is Uniclear, and further reciting that ethylenediamine/stearyl dimer dilinoleate copolymer is at least one copolymer of ethylenediamine and dilinoleic acid monomers, end-blocked with stearyl alcohol, and further reciting that a trade name for ethylenediamine/stearyl dimer dilinoleate copolymer is Uniclear.

quoting *United States v. Teletronics, Inc.*, 857 F.2d 778, 785, 8 USPQ2d 1217, 1223 (Fed. Cir. 1988). In the present case, the Examiner has failed to establish that one skilled in the art, armed with the knowledge that Uniclear® is (or, as the Examiner suggests, may be) ethylenediamine/stearyl dimer tallate copolymer or ethylenediamine/stearyl dimer dilinoleate copolymer, would be unable to make and use the invention as claimed in claims 335 and 336.

While Appellants recognize that “[t]he relationship between a trademark and the product it identifies is sometimes indefinite, uncertain, and arbitrary,” there is no *prima facie* doctrine indicating that all tradenames are indefinite, uncertain, and/or arbitrary. M.P.E.P. § 608.01(v) (emphasis added). Rather, the M.P.E.P. instructs that “[t]he matter of sufficiency of disclosure must be decided on an individual case-by-case basis.” *Id.*

In the present case, Appellants have established that, according to the International Cosmetic Ingredient Dictionary and Handbook, one skilled in the art would recognize Uniclear® as ethylenediamine/stearyl dimer tallate copolymer or ethylenediamine/stearyl dimer dilinoleate copolymer. See Exhibit 1 (CTFA pages 657-58), Section IX. Thus, even assuming *arguendo* that, as the Office suggests, the trademark may have changed at the whim of the manufacturer, presumably one skilled in the art would still be led to ethylenediamine/stearyl dimer tallate copolymer or ethylenediamine/stearyl dimer dilinoleate copolymer absent undue experimentation, as those copolymers are the only copolymers listed in the CTFA as having the tradename Uniclear®.

Therefore, the instant application's disclosure of Uniclear® clearly and adequately enables those skilled in the art to make and use the invention by incorporating at least one structuring polymer chosen from ethylenediamine/stearyl dimer tallate copolymer and ethylenediamine/stearyl dimer dilinoleate copolymer, as claimed in claims 335 and 336. Appellants further point out that the test is not whether any experimentation at all may be necessary, but whether such experimentation is undue. In the present case, express disclosure of Uniclear®, coupled with knowledge in the art that Uniclear® may be ethylenediamine/stearyl dimer tallate copolymer or ethylenediamine/stearyl dimer dilinoleate copolymer adequately identifies and enables claims 335 and 336. As the Examiner has failed to establish that the claimed copolymers are not enabled, i.e., that one skilled in the art would be unable to make and use the invention without undue experimentation, Appellants respectfully request reversal of the rejection.

**B. The Obviousness-Type Double Patenting Rejections Are Moot**

Claims 318-336 have been provisionally rejected for obviousness-type double patenting over (1) claims 1-102 of co-pending Application No. 09/733,897; (2) claims 336-367 of co-pending Application No. 09/877,898; (3) claims 1-126 of co-pending Application No. 10/129,377; and (4) claims 1-38 and 41-44 of co-pending Application No. 10/198,931. Claims 318-334 and 336 have been provisionally rejected for obviousness-type double patenting over claims 1-124 of co-pending Application No. 10/203,254, and claims 318-325, 328-332, and 334 have been rejected for obviousness-type double patenting over claims 1-19 of U.S. Patent No. 6,761,881 to Bara.

Although Appellants disagree with the grounds for the rejections, in the interest of expediting prosecution and narrowing the issues for appeal, Appellants filed a Terminal Disclaimer over the above-referenced applications and patents on October 2, 2006. Accordingly, the obviousness-type double patenting rejections now stand moot, and Appellants request their reversal.

**C. Claims 318-334 Are Not Obvious Under 35 U.S.C. § 103**

Claims 318-334 have been rejected under 35 U.S.C. § 103 over U.S. Patent Nos. 6,402,408 to Ferrari (“Ferrari”); 5,500,209 to Ross et al. (“Ross”), or 5,783,657 to Pavlin et al. (“Pavlin”), taken together with U.S. Patent Nos. 4,699,779 to Palinczar (“Palinczar”); 6,180,123 to Mondet (“Mondet”); or 5,961,998 to Arnaud et al. (“Arnaud”).

According to the Examiner, Ferrari, Ross, and Pavlin “all teach the conventionality of producing a composition comprising a liquid fatty phase which comprises a polyamide polymer and an oil phase as herein claimed.” Final Office Action at 6. The Examiner further alleges that Ferrari, Ross, and Pavlin teach the addition of optional ingredients, such as thickening agents and liposoluble polymers. *Id.* at 6-7. Moreover, the Examiner alleges that Palinczar, Mondet, and Arnaud “all teach the conventionality of using alkylated cellulose and gums as suitable thickening agents for compositions that may comprise an oily phase . . . .” *Id.* at 7. From this, the Office apparently concludes that the present claims are obvious because “[t]he constituents all appear to be conventional and known.” *Id.* at 8. Appellants respectfully disagree.

As the Board is no doubt aware, to establish a *prima facie* case of obviousness, the Examiner must demonstrate, among other things, some suggestion or motivation to combine reference teachings. M.P.E.P. § 2143. The threshold for establishing a

motivation to combine is high, requiring “clear and particular” evidence. *In re Dembicza*k, 50 U.S.P.Q.2d 1614, 1617, 175 F.3d 994, 999 (Fed. Cir. 1999). Yet in the present case the Examiner has failed to point to any suggestion or motivation to combine a polyamide polymer with at least one oil-soluble polymer chosen from alkyl cellulose and alkylated guar gums, as claimed herein, in any of the cited references or in the knowledge generally available to one of ordinary skill in the art. Moreover, the Examiner fails to understand his obligation to find such a suggestion or motivation: “The primary references to Palinczar, Mondet and Arnaud et al[.] all show the methylcellulos and alkylated guar gums as conventional thickening agents. The primary references to Ferrari, Ross et al[.] and Pavlin et al[.] all employ thickening agents. What more is necessary to establish a *prima facie* case of obviousness?” Final Office Action at 11.

In fact, none of the cited primary references, Ross, Pavlin, or Ferrari, provides any suggestion or motivation to combine the reference with the cited secondary references. Ross, in particular, not only fails to suggest combination with any of the cited references, but rather teaches away from adding a thickening agent, such as the at least one oil-soluble polymer chosen from alkyl cellulose and alkylated guar gums claimed herein: “Of course, if compositions of the present invention contain gelling/thickening agents other than the polyamide, such as waxes, a white residue would possibly be left on the skin.” Ross, col. 9, ll. 15-18. According to Ross, such a white residue is undesirable. *See id.* at ll. 9-12. Thus, one of ordinary skill in the art, when reading Ross, would most certainly not be motivated to add an additional gelling

or thickening agent, such as the at least one oil-soluble polymer chosen from alkyl cellulose and alkylated guar gums, as claimed herein.

Likewise, neither Pavlin nor Ferrari provides the requisite motivation to combine at least one oil-soluble polymer chosen from alkyl cellulose and alkylated guar gums with a polyamide polymer. Pavlin merely mentions that “[t]he gel may be combined with ingredients conventionally incorporated into personal care products,” (Pavlin, col. 17, ll. 26-27), but does not specifically reference additional thickening agents, much less the at least one oil-soluble polymer chosen from alkyl cellulose and alkylated guar gums as claimed herein. While Ferrari notes that liposoluble polymers may be added to the composition disclosed therein, Ferrari’s only reference to an additional thickening agent emphasizes that the thickening agent must be water-soluble, and not oil-soluble as claimed herein: “The composition of the present invention may further comprise at least one suitable additive commonly used in the field concerned chosen from water optionally thickened or gelled with an aqueous-phase thickener or gelling agent . . .” Ferrari, col. 7, ll. 11-14 (emphasis added). Thus, the Examiner has failed to point to any suggestion or motivation to combine at least one oil-soluble polymer chosen from alkyl cellulose and alkylated guar gums with the polyamide polymer disclosed in Ross, Pavlin, or Ferrari.

Moreover, none of Palinczar, Mondet, or Arnaud, which all disclose either an alkylated guar gum or an alkyl cellulose, teach or suggest combining those secondary ingredients with a polyamide polymer in a liquid fatty phase. Thus, the Examiner has failed to point to any “clear and particular” evidence of motivation to combine the references, as required by *Dembiczak* and the Patent Office to establish a *prima facie*

case of obviousness. Furthermore, the Examiner has failed to point to any evidence that the requisite motivation would stem from any sort of general knowledge available to those of ordinary skill in the art, as required by M.P.E.P. § 2143, nor are Appellants aware of such evidence.

Rather, in lieu of addressing the merits of Appellants arguments or attempting to establish the requisite motivation, the Examiner instead alleges that "Applicants have characterized each of the references in comparison to the instantly claimed invention as though the requirements of 35 USC 102 were in place," although the instant rejection is under 35 U.S.C. § 103. Final Office Action at 10. Clearly, the arguments of record address the references' lack of a suggestion or motivation to combine references, as required to establish obviousness, and not anticipation.

For at least the reason that the Examiner has not established any suggestion or motivation to combine the references, no *prima facie* case of obviousness has been established, and therefore, the rejection is legally improper and should be reversed

#### **D. Conclusion**

For the reasons given above, pending claims 318-336 are allowable and reversal of the Examiner's rejections is respectfully requested.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this Appeal Brief, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Dated: January 3, 2007

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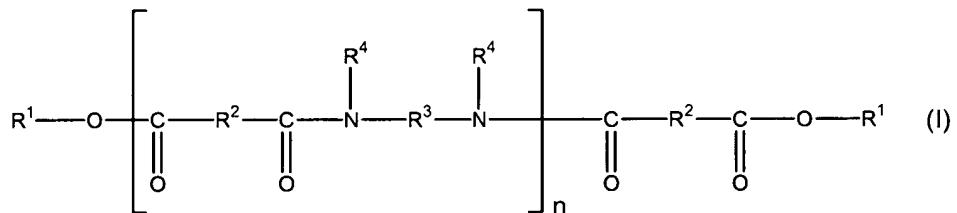
**VIII. Claims Appendix to Appeal Brief Under Rule 41.37(c)(1)(viii)**

1-317. (Canceled)

318. (Previously presented) A composition comprising at least one liquid fatty phase which comprises:

(i) at least one structuring polymer, wherein said at least one structuring polymer is at least one polyamide polymer comprising:  
a polymer skeleton which comprises at least one amide repeating unit; and  
(ii) at least one oil-soluble polymer chosen from alkyl celluloses and alkylated guar gums.

319. (Previously presented) The composition according to claim 318, wherein said at least one polyamide polymer is chosen from polymers of formula (I):



in which:

- n is an integer which represents the number of amide units such that the number of ester groups present in said at least one polyamide polymer ranges from 10% to 50% of the total number of all ester groups and all amide groups comprised in said at least one polyamide polymer;

- R<sup>1</sup>, which are identical or different, are each chosen from alkyl groups comprising at least 4 carbon atoms and alkenyl groups comprising at least 4 carbon atoms;

- R<sup>2</sup>, which are identical or different, are each chosen from C<sub>4</sub> to C<sub>42</sub> hydrocarbon-based groups with the proviso that at least 50% of R<sup>2</sup> are chosen from C<sub>30</sub> to C<sub>42</sub> hydrocarbon-based groups;

- R<sup>3</sup>, which are identical or different, are each chosen from organic groups comprising atoms chosen from carbon atoms, hydrogen atoms, oxygen atoms and nitrogen atoms with the proviso that R<sup>3</sup> comprises at least 2 carbon atoms; and

- R<sup>4</sup>, which are identical or different, are each chosen from hydrogen atoms, C<sub>1</sub> to C<sub>10</sub> alkyl groups and a direct bond to at least one group chosen from R<sup>3</sup> and another R<sup>4</sup> such that when said at least one group is chosen from another R<sup>4</sup>, the nitrogen atom to which both R<sup>3</sup> and R<sup>4</sup> are bonded forms part of a heterocyclic structure defined in part by R<sup>4</sup>-N-R<sup>3</sup>, with the proviso that at least 50% of all R<sup>4</sup> are chosen from hydrogen atoms.

320. (Previously presented) The composition according to claim 318, wherein said at least one liquid fatty phase of the composition comprises at least one oil.

321. (Previously presented) The composition according to claim 320, wherein said at least one oil is chosen from at least one polar oil and at least one apolar oil.

322. (Previously presented) The composition according to claim 321, wherein said at least one polar oil is chosen from:

- hydrocarbon-based plant oils with a high content of triglycerides comprising fatty acid esters of glycerol in which the fatty acids comprise chains having from 4 to 24

carbon atoms, said chains possibly being chosen from linear and branched, and saturated and unsaturated chains;

- synthetic oils or esters of formula  $R_5COOR_6$  in which  $R_5$  is chosen from linear and branched fatty acid residues comprising from 1 to 40 carbon atoms and  $R_5 + R_6 \geq 10$ ;

- synthetic ethers containing from 10 to 40 carbon atoms;
- $C_8$  to  $C_{26}$  fatty alcohols; and
- $C_8$  to  $C_{26}$  fatty acids.

323. (Previously presented) The composition according to claim 321, wherein said at least one apolar oil is chosen from:

- silicone oils chosen from volatile and non-volatile, linear and cyclic polydimethylsiloxanes that are liquid at room temperature;

- polydimethylsiloxanes comprising alkyl or alkoxy groups which are pendant and/or at the end of the silicone chain, the groups each containing from 2 to 24 carbon atoms;

- phenylsilicones; and

- hydrocarbons chosen from linear and branched, volatile and non-volatile hydrocarbons of synthetic and mineral origin.

324. (Previously presented) The composition according to claim 318, wherein said at least one liquid fatty phase comprises at least one non-volatile oil.

325. (Previously presented) The composition according to claim 324, wherein said at least one non-volatile oil is chosen from hydrocarbon-based oils of mineral, plant and synthetic origin, synthetic esters and ethers, and silicone oils.

326. (Previously presented) The composition according to claim 318, wherein said at least one liquid fatty phase comprises at least one volatile solvent chosen from hydrocarbon-based solvents and silicone solvents optionally comprising alkyl or alkoxy groups that are pendant or at the end of a silicone chain.

327. (Previously presented) The composition according to claim 318, wherein said alkyl celluloses are chosen from ethylcelluloses.

328. (Previously presented) The composition according to claim 318, wherein said alkylated guar gums are chosen from C<sub>1</sub>-C<sub>5</sub> alkyl galactomannans.

329. (Previously presented) The composition according to claim 318, wherein said alkylated guar gums are chosen from ethyl guars.

330. (Previously presented) The composition according to claim 318, wherein said at least one liquid fatty phase further comprises a silicone oil.

331. (Previously presented) The composition according to claim 318, further comprising at least one fatty alcohol.

332. (Previously presented) A composition according to claim 318, further comprising at least one oil-soluble ester.

333. (Previously presented) The composition according to claim 332 wherein the at least one oil-soluble ester comprises at least one free hydroxy group.

334. (Previously presented) The composition according to claim 332 wherein the at least one oil-soluble ester is not castor oil.

335. (Previously presented) A composition comprising at least one liquid fatty phase which comprises:

- (i) at least one structuring polymer chosen from ethylenediamine/stearyl dimer tallate copolymer; and
- (ii) at least one oil-soluble polymer chosen from alkyl celluloses and alkylated guar gums.

336. (Previously presented) A composition comprising at least one liquid fatty phase which comprises:

- (i) at least one structuring polymer chosen from ethylenediamine/stearyl dimer dilinoleate copolymer; and
- (ii) at least one oil-soluble polymer chosen from alkyl celluloses and alkylated guar gums.

**IX. Evidence Appendix to Appeal Brief Under Rule 41.37(c)(1)(ix)**

Exhibit 1 - International Cosmetic Ingredient Dictionary and Handbook ("CTFA"), pp. 657-58, presented as Exhibit 1 to Applicants' April 19, 2005, Second Substitute Amendment, which Amendment was entered by the Examiner according to the July 13, 2005, Office Action.

**X. Related Proceedings Appendix to Appeal Brief Under Rule 41.37(c)(1)(x)**

No related proceeding decisions are relied upon herein by Appellants.

**Exhibit 1:**

**International Cosmetic Ingredient Dictionary and Handbook (“CTFA”),  
pages 657-58**

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# **International Cosmetic Ingredient Dictionary and Handbook**

**Tenth Edition  
2004**

**Editors**  
Tara E. Gottschalck  
Gerald N. McEwen, Jr., Ph.D., J.D.

**Volume 1**

*Published by*  
**The Cosmetic, Toiletry, and Fragrance Association**  
1101 17th Street, NW, Suite 300  
Washington, D.C. 20036-4702  
[www.ctfa.org](http://www.ctfa.org)

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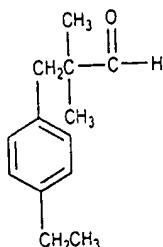
The Cosmetic, Toiletry, and Fragrance Association, Inc.  
CTFA

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nition: Ethyl 2,2-Dimethylhydrocinnamal  
e aromatic aldehyde that conforms  
erally to the formula:



formation Source: RIFM

emical Class: Aldehydes

nction: Fragrance Ingredient

chnical/Other Names:

lpha,alpha-Dimethyl-p-  
ethylphenylpropanal (RIFM)  
, $\alpha$ -Dimethyl-p-ethylphenylpropanal  
- $\beta$ -(p-Ethylphenyl)-2,2-Dimethylpropion-  
aldehyde

ade Name:

Floralozone (International Flavors & Fra-  
grances)

#### ETHYLENE/ACRYLIC ACID COPOLYMER

CAS No.: 9010-77-9

efinition: Ethylene/Acrylic Acid Copolymer  
a copolymer of ethylene and acrylic acid  
monomers.

Information Sources: 21CFR177.1310,  
1CFR178.1005, CIR: [SQ] IJT 21(SUPPL.  
) 2002

Chemical Class: Synthetic Polymers

unctions: Binder; Film Former; Viscosity  
Increasing Agent - Nonaqueous

chnical/Other Name:

2-Propenoic Acid with Ethene

rade Names:

A-C Copolymer 540 (Honeywell)  
A-C Copolymer 580 (Honeywell)  
A-C Copolymer 540A (Honeywell)  
AEC Ethylene/Acrylic Acid Copolymer (A &  
E Connock)  
EA-209 (Kobo)

#### ETHYLENE/ACRYLIC ACID/VA COPOLYMER

CAS No.: 26713-18-8

efinition: Ethylene/Acrylic Acid/VA  
Copolymer is a copolymer of ethylene, acrylic  
acid and vinyl acetate monomers.

Information Source: CIR: [SQ] IJT 21  
(SUPPL. 3) 2002

Chemical Class: Synthetic Polymers

unctions: Binder; Film Former; Viscosity  
Increasing Agent - Nonaqueous

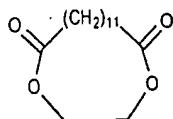
chnical/Other Name:  
2-Propenoic Acid, Polymer with Ethene and  
Ethenyl Acetate

#### ETHYLENE BRASSYLATE

CAS No. EINECS No.  
105-95-3 203-347-8

Empirical Formula:  
C<sub>15</sub>H<sub>26</sub>O<sub>4</sub>

Definition: Ethylene Brassylate is the cyclic  
ester that conforms to the formula:



Information Sources: 21CFR172.515,  
RIFM, TSCA

Chemical Class: Esters

unction: Fragrance Ingredient

Reported Product Categories: Foundations;  
Moisturizing Preparations; Cleansing  
Products (Cold Creams, Cleansing Lotions,  
Liquids and Pads); Personal Cleanliness  
Products, Misc.

chnical/Other Names:  
1,4-Dioxacycloheptadecane-5,17-dione  
Ethylene brassylate (RIFM)  
Ethylene Undecane Dicarboxylate

rade Name:  
AEC Ethylene Brassylate (A & E Connock)

#### ETHYLENE/CALCIUM ACRYLATE COPOLYMER

CAS No.: 26445-96-5

Empirical Formula:  
(C<sub>3</sub>H<sub>4</sub>O<sub>2</sub> • C<sub>2</sub>H<sub>4</sub>)<sub>x</sub> • xCa

Definition: Ethylene/Calcium Acrylate  
Copolymer is a copolymer of ethylene and  
calcium acrylate monomers.

Information Sources: 21CFR175.105,  
CIR: [SQ] IJT 21(SUPPL. 3) 2002

Chemical Class: Synthetic Polymers

unctions: Binder; Film Former

chnical/Other Name:  
2-Propenoic Acid, Polymer with Ethene,  
Calcium Salt

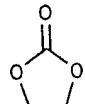
#### ETHYLENE CARBONATE

CAS No. EINECS No.  
96-49-1 202-510-0

JPN Translation:  
炭酸エチレン

Empirical Formula:  
C<sub>3</sub>H<sub>4</sub>O<sub>3</sub>

Definition: Ethylene Carbonate is the  
organic compound that conforms to the  
formula:



Information Sources: JCIC, JCLS

Chemical Class: Esters

unction: Solvent

chnical/Other Name:  
1,3-Dioxolan-2-one

#### ETHYLENEDIAMINE/DIMER TALLATE COPOLYMER BIS-HYDROGENATED TALLOW AMIDE

efinition: Ethylenediamine/Dimer Tallate  
Copolymer Bis-Hydrogenated Tallow Amide  
is a copolymer of ethylenediamine and tall oil  
dimer acid monomers, end-blocked with  
Hydrogenated Tallowamine (q.v.).

Chemical Class: Synthetic Polymers

unctions: Oral Care Agent; Skin-Condition-  
ing Agent - Miscellaneous; Viscosity  
Increasing Agent - Nonaqueous

chnical/Other Name:  
Sylvaclear A200

#### ETHYLENEDIAMINE/STEARYL DIMER DILINOLEATE COPOLYMER

efinition: Ethylenediamine/Stearyl Dimer  
Dilinoleate Copolymer is a copolymer of  
ethylenediamine and Dilinoleic Acid (q.v.)  
monomers, end-blocked with stearyl alcohol.

Chemical Class: Synthetic Polymers

unctions: Oral Care Agent; Skin-Condition-  
ing Agent - Miscellaneous; Viscosity  
Increasing Agent - Nonaqueous

rade Name:  
UNICLEAR (Arizona)

#### ETHYLENEDIAMINE/STEARYL DIMER TALLATE COPOLYMER

efinition: Ethylenediamine/Stearyl Dimer  
Tallate Copolymer is a copolymer of ethyl-

The inclusion of any compound in the *Dictionary and Handbook* does not indicate that use of that substance as a cosmetic ingredient complies with the laws and regulations governing such use in the United States or any other country.

## Ethylenediamine/Stearyl Dimer Tallate Copolymer (Cont.)

enediamine and tall oil dimer acid monomers, end-blocked with stearyl alcohol.

**Chemical Class:** Synthetic Polymers

**Functions:** Oral Care Agent; Skin-Conditioning Agent - Miscellaneous; Viscosity Increasing Agent - Nonaqueous

**Trade Name:**  
UNICLEAR (Arizona)

**Information Sources:** JCIC, JCLS

**Chemical Class:** Amides

**Function:** Skin-Conditioning Agent - Miscellaneous

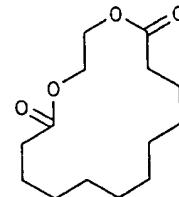
**Technical/Other Name:**  
Condensate of Dilinoleic Acid and Ethylenediamine

### ETHYLENE DODECANEDIOATE

**CAS No.** 54982-83-1  
**EINECS No.** 259-423-6

**Empirical Formula:**  
 $C_{14}H_{24}O_4$

**Definition:** Ethylene Dodecanedioate is the organic compound that conforms to the formula:



**Information Source:** RIFM

**Chemical Classes:** Esters; Heterocyclic Compounds

**Function:** Fragrance Ingredient

**Technical/Other Names:**  
Cyclic Ethylene Dodecanedioate  
1,4-Dioxacyclohexadecane-5,16-Dione  
Ethylene dodecanedioate (RIFM)  
Musk C-14

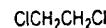
**Trade Name:**  
Zenolide (International Flavors)

### ETHYLENE DICHLORIDE

**CAS Nos.** 107-06-2  
**EINECS Nos.** 203-458-1  
1300-21-6  
**215-077-8**

**Empirical Formula:**  
 $C_2H_4Cl_2$

**Definition:** Ethylene Dichloride is the halogenated aliphatic hydrocarbon that conforms to the formula:



**Information Sources:** 21CFR165.110, 21CFR172.560, 21CFR172.710, 21CFR172.864, 21CFR173.165, 21CFR173.230, 21CFR173.315, 21CFR175.105, 21CFR573.440, EEC(II-125), FCC, MI-13(3831), TSCA

**Chemical Class:** Halogen Compounds

**Function:** Not Reported

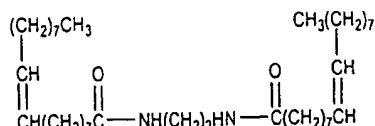
**Technical/Other Names:**  
Dichloroethane  
Ethane, 1,2-Dichloro-

### ETHYLENE DIOLEAMIDE

**CAS No.** 110-31-6  
**EINECS No.** 203-756-1

**Empirical Formula:**  
 $C_{38}H_{72}N_2O_2$

**Definition:** Ethylene Dioleamide is the diamide that conforms generally to the formula:



**Information Sources:** 21CFR175.300, TSCA

**Chemical Class:** Amides

**Function:** Viscosity Increasing Agent - Nonaqueous

**Technical/Other Names:**  
N,N'-1,2-Ethanediylbis-9-Octadecenamide  
9-Octadecenamide, N,N'-1,2-Ethanediylbis-

### ETHYLENE/MA COPOLYMER

**CAS No.:** 9006-26-2

**JPN Translation:**  
(エチレン / マレイン酸) コポリマー

**Definition:** Ethylene/MA Copolymer is a polymer of ethylene and maleic anhydride monomers.

**Information Sources:** 21CFR175.105, 21CFR177.1210, 21CFR177.1520, JCIC, JCLS, TSCA

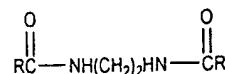
**Chemical Class:** Synthetic Polymers

**Functions:** Binder; Film Former; Suspending Agent - Nonsurfactant

**Technical/Other Names:**  
Ethylene/Maleic Anhydride Copolymer  
2,5-Furandione, Polymer with Ethene

### ETHYLENE DIHYDROGENATED TALLOW-AMIDE

**Definition:** Ethylene Dihydrogenated Tallowamide is the diamide that conforms generally to the formula:



where RCO- represents the fatty acids derived from hydrogenated tallow.

**Chemical Class:** Amides

**Function:** Viscosity Increasing Agent - Nonaqueous

**Technical/Other Names:**

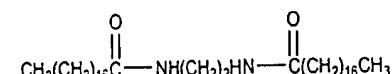
N,N'-1,2-Ethanediylbis(Hydrogenated Tallowamide)  
(Hydrogenated Tallowamide), N,N'-1,2-Ethanediylbis-

### ETHYLENE DISTEARAMIDE

**CAS No.** 110-30-5  
**EINECS No.** 203-755-6

**Empirical Formula:**  
 $C_{38}H_{76}N_2O_2$

**Definition:** Ethylene Distearamide is the diamide that conforms to the formula:



**Information Source:** TSCA

**Chemical Class:** Amides

**Function:** Viscosity Increasing Agent - Nonaqueous

**Technical/Other Names:**  
N,N'-1,2-Ethanediylbisoctadecanamide  
N,N'-Ethylene Bisstearamide  
Octadecanamide, N,N'-1,2-Ethanediylbis-

**Trade Name:**  
Lipowax C (Lipo)

### ETHYLENE/MAGNESIUM ACRYLATE COPOLYMER

**CAS No.:** 27515-37-3

**Empirical Formula:**  
 $(C_3H_4O_2 \cdot C_2H_4)_x \cdot xMg$

**Definition:** Ethylene/Magnesium Acrylate Copolymer is a copolymer of ethylene and magnesium acrylate monomers.

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